

SYNOPSIS OF FEDERAL TRADE COMMISSION DECISIONS
CONCERNING THE ADVERTISING AND SALE OF
HOME IMPROVEMENT PRODUCTS

The Federal Trade Commission has determined that the following practices in the advertising and sale of home improvement products, (i.e., residential siding, storm windows and doors, swimming pools, etc.), are unfair or deceptive and are unlawful under Section 5(a)(1) of the Federal Trade Commission Act.

A. "Bait and switch"

"Bait and switch" is the advertising of a product without the bona fide intention to sell it, for the purpose of establishing contact with a prospective customer in order to induce or "switch" him to purchase another product. "Bait and switch" is an unfair or deceptive act or practice, 1/ and it may be achieved through a variety of practices which are themselves unfair or deceptive, including but not limited to the following:

It is an unfair or deceptive act or practice to disparage an advertised product for the purpose of "switching" a customer to the purchase of another product. 2/

It is an unfair or deceptive act or practice to advertise a product whose actual appearance or performance discourages its purchase by being below the quality implied or represented in the advertising. 3/

1/ Allstate Industries of North Carolina, Inc., et al., Docket 8738, 75 FTC 465, 475-77, 480-81, 485-486 (April 1, 1969), 423 F.2d 423 (4th Cir.), cert. denied, 400 U.S. 929 (1970); American Aluminum Corp., et al., Docket 8805, 84 FTC 40-41, 43 (July 2, 1974), aff'd per curiam, 522 F.2d 1278 (5th Cir. 1975), cert. denied, 426 U.S. 906 (1976); Royal Construction Company (Atlas Aluminum Co.), et al., Docket 8690, 71 FTC 762, 779-780, 791 (June 1, 1967).

2/ Royal Construction Company, supra at pp. 775-76, 791; Allstate Industries of North Carolina, supra at pp. 480-81; Southern States Distributing Co. Inc., et al., Docket 8882, 83 FTC 1176, 1139-40, 1159 (Dec. 26, 1973); American Aluminum Corp., supra at pp. 33, 40-41, 43.

3/ Royal Construction Company, supra at pp. 780, 791; American Aluminum Corp., supra at pp. 33, 40-41, 43.

is an unfair or deceptive act or practice to "switch" a customer by refusing to take orders for delivery or failing to make delivery, if an order is taken, within a reasonable period of time. 4/

The existence of bait and switch schemes may also be evidenced by the following factors: whether in fact there were a significant number of sales of the advertised product at the advertised price; 5/ whether salesmen received commissions on the sale of the advertised product or whether their commissions on such product were lower than for other products; 6/ whether advertising is concentrated on a product whose sales were minimal; 7/ and whether the company has a sufficient quantity of the advertised product to meet reasonably anticipated demands. 8/

B. Other unfair or deceptive practices which are unlawful

It is an unfair or deceptive act or practice to falsely represent that advertised products are being offered at special or reduced prices, or that advertised offers are being made for a limited time. 9/

4/ Southern States Distributing Co., supra at pp. 1140, 1159; Royal Construction Company, supra at pp. 780, 791; American Aluminum Corp., supra at pp. 33-34, 41, 43.

5/ Southern States Distributing Co., supra at pp. 1137-38; Royal Construction Co., supra at pp. 773-74.

6/ Allstate Industries, supra at p. 476; American Aluminum Corp., supra at pp. 31-33; Royal Construction Co., supra at p. 779.

7/ Southern States Distributing, supra at p. 1137.

8/ Royal Construction Co., supra at p. 775.

9/ Allstate Industries, supra at pp. 477, 480-481; Royal Construction Company, supra at pp. 781, 791; Certified Building Products, Inc., et al., Docket 2875, 83 FTC 1004, 1032-33 (October 5, 1973), aff'd sub. nom. Thiret v. FTC, 512 F.2d 176 (10th Cir. 1975).

It is an unfair or deceptive act or practice to falsely represent that a prospective customer will receive a "free gift" by replying to a business solicitation or making a purchase. 10/

It is an unfair or deceptive act or practice to falsely represent the fuel or energy savings expected to result from the insulating qualities of residential siding. 11/

It is an unfair or deceptive act or practice to falsely represent the manufacturer or the seller's relationship with the manufacturer of home improvement products offered for sale. 12/

It is an unfair or deceptive act or practice to falsely represent the durability or maintenance characteristics of any product. 13/

It is an unfair or deceptive act or practice to falsely represent to prospective customers that their homes may be used as "model homes" for advertising or demonstration purposes and therefore they will qualify for a reduction from a purported "regular" price. 14/

10/ Royal Construction Company, supra at p. 784; American Aluminum Corp., supra at pp. 42-43.

11/ Certified Building Products, supra at p. 1034.

12/ Southern States Distributing Co., supra at pp. 1142, 1159; Allstate Industries, supra at pp. 478, 481; Certified Aluminum Corp., supra at p. 1035.

13/ Certified Aluminum Corp., supra at pp. 1035-36; American Aluminum Corp., supra at pp. 42-43.

14/ Royal Construction Company, supra at pp. 771-73, 791; Allstate Industries, supra at pp. 477-78, 481; American Aluminum Corp., supra at pp. 42-43.